

ELMER PETERSON

IBLA 73-291

Decided June 17, 1975

Appeal from a decision by Administrative Law Judge Dent D. Dalby establishing the amount of animal-unit months of Federal range forage available to Wallis Livestock in the Pass Creek Ridge Allotment.

Appeal dismissed.

1. Appeals -- Rules of Practice: Appeals: Dismissal -- Rules of Practice:  
Appeals: Service on Adverse Party

Under 43 CFR 4.402, an appeal is subject to summary dismissal by the Board of Land Appeals when notice of appeal or statement of reasons is not served on adverse parties within the time prescribed.

APPEARANCES: John A. MacPherson, Esq., Brimmer, MacPherson & Golden, of Rawlins, Wyoming, for appellant-intervenor, Elmer Peterson.

OPINION BY ADMINISTRATIVE JUDGE GOSS

On February 25, 1971, the Rawlins, Wyoming, District Manager, Bureau of Land Management, issued a decision reducing the grazing privileges of Nellie Wallis and Dan L. Wallis d/b/a Wallis Livestock in the Pass Creek Ridge Allotment. Such reduction was made on the recommendation of the Advisory Board that the Wallises' grazing privileges had been erroneously calculated in the past.

Nellie Wallis and Dan L. Wallis appealed such decision, and hearing was held on May 23, 1972, in Rawlins, Wyoming. At the hearing Elmer Peterson, another rancher holding privileges in the Pass Creek Ridge Allotment, appeared as an intervenor and stated that if there was any increase granted, it should be proportionate to all users.

On January 26, 1973, the Judge issued his decision. The Judge found that from 1963 to 1970 a mistake had been made in calculating the Wallis grazing privileges. While recognizing such error, he also concluded that the District Manager had incorrectly calculated the amount of AUMs that Wallises presently are entitled to in the Pass Creek Ridge Allotment. The Judge calculated the AUMs to be 616, nearly 100 AUMs greater than the 519 AUMs allotted by the District Manager.

The Wallises have not appealed such decision; however, Elmer Peterson has filed an appeal with this Board.

Peterson alleges that the allocation made by the Judge to the Wallises is improper and based upon erroneous calculations. He also argues that the decision is in error because it is contrary to the Advisory Board recommendation and contrary to the decision of the District Manager.

There is nothing in the record to show that appellant served either Wallis with a copy of his statement of reasons. Repeated efforts have been made by the Board to determine whether service has been made, without proper response from appellant.

Under 43 CFR 4.402, an appeal is subject to summary dismissal by the Board of Land Appeals when notice of appeal or statement of reasons is not served on adverse parties within the time prescribed. Daniel Martinis, 13 IBLA 58 (1973). Under the facts herein, dismissal is a proper exercise of the Board's discretion. Cf. Tagala v. Gorsuch, 411 F.2d 589 (9th Cir. 1969).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Joseph W. Goss  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Martin Ritvo  
Administrative Judge

